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SECRETARY OF EDUCATION

BILL RICHARDSON
Governor

April 1, 2009

MEMORANDUM

TO: Special Education Directors
Regional Education Cooperatives
Charter Schools Special Education Coordinators

FROM: Denise Koscielniak
Special Education Director, Special Education Bureau

RE: AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

The *American Recovery and Reinvestment Act of 2009* (ARRA) has appropriated funding for programs under Part B of the *Individuals with Disabilities Education Act* (IDEA) which will assist local educational agencies (LEAs) in meeting the educational needs of children with disabilities under the IDEA. This memorandum is intended to give you preliminary information with respect to this funding as well as the estimated allocations that New Mexico LEAs will receive under the ARRA.

Principles of ARRA Funding

The overall goals of the ARRA are to stimulate the economy in the short term and invest in education and other essential public services to ensure the long-term economic health of the nation. The federal Department of Education has identified four principles which guide the distribution and use of ARRA funds:

1. Spend funds quickly to save and create jobs.
2. Improve student achievement through school improvement and reform by:
 - a. Making progress toward rigorous college- and career-ready standards and high-quality assessments that are valid and reliable for all students, including English language learners and students with disabilities;

- b. Establishing pre-K-to college and career data systems that track progress and foster continuous improvement;
 - c. Making improvements in teacher effectiveness and in the equitable distribution of qualified teachers for all students, particularly students who are most in need;
 - d. Providing intensive support and effective interventions for the lowest-performing schools.
3. Ensure transparency, reporting and accountability to prevent fraud and abuse.
 4. Investing the funds in ways that do not result in unsustainable continuing commitments after the funding expires.

Awarding of Funds under the ARRA

The New Mexico Public Education Department (NMPED) has been informed by the Office of Special Education Programs (OSEP) that under Title VIII of the ARRA, we will receive \$91,147,493.00 under IDEA, Section 611 (basic entitlement) and \$3,401,589.00 under Section 619 (preschool entitlement) the amounts of which are targeted for special education. Fifty percent (50%) of those amounts will be made available to the NMPED by the end of March 2009. The remaining 50% will be made available sometime between July 1 and October 1, 2009. Attached to this memorandum is a spreadsheet that provides the allocation by LEA for the first 50% of the ARRA funding. OSEP has encouraged us to award these funds to you by the end of April and we intend to make a maximum effort to meet that goal.

Your eligibility for the first 50% of these funds will be based on the eligibility established by you in your IDEA sub-grant application for FY 2008 funds, so no additional application is needed. These funds will be made available to you at the end of April. We have not yet received guidance about your eligibility for receiving the second 50%. As soon as we receive that guidance, we will pass it on to you. The funding you will receive under the ARRA should be obligated during the school years 2008-2009, 2009-2010 and 2010-2011. All ARRA funds must be obligated by September 30, 2011 and liquidated by December 31, 2011.

With regard to distributing ARRA funding to your locally chartered charter schools, please keep in mind that pursuant to 34 CFR § 300.209(b), the LEAs will have to flow the stimulus funding to the local charters on the same basis as they provide such funds to their other public schools, including proportionate distribution based on relative enrollment of children with disabilities. With regard to the proportionate share for private schools, LEAs would have to calculate that as provided by 34 CFR § 300.133 which is based on the total subgrant. It is our understanding that the ARRA funding that you will receive is to be considered part of and in addition to your 2009-2010 subgrant. As a result, your proportionate share for private schools will be calculated based on the total amount of that subgrant. If this guidance changes, we will let you know.

Use of ARRA Funds

ARRA funds may be used for any purpose authorized by IDEA, Part B and its implementing regulations. This means that these funds must be used consistently with IDEA Part B as well as

applicable General Education Provisions Act (GEPA) and Education Department General Administrative Regulations (EDGAR) regulations. However, given the temporary nature of this funding, OSEP is strongly encouraging LEAs to use these funds “for short-term investments that have the potential for long-term benefits.” OSEP is strongly discouraging use of these funds “for expenditures the LEAs may not be able to sustain once the recovery funds are expended.” As a result, the hiring of staff or the commencement of programs that cannot be funded after two years when your ARRA funding has been expended is discouraged. OSEP is suggesting some possible uses that it believes are aligned with the reform goals listed above:

- Obtain state-of-the art assistive technology devices and provide training in their use to enhance access to the general curriculum for students with disabilities.
- Provide intensive district-wide professional development for special education and regular education teachers that focuses on scaling-up, through replication, proven and innovative evidence-based school-wide strategies in reading, math, writing and science, and positive behavioral supports to improve outcomes for students with disabilities.
- Develop or expand the capacity to collect and use data to improve teaching and learning.
- Expand the availability and range of inclusive placement options for preschoolers with disabilities by developing the capacity of public and private preschool programs to serve these children.
- Hire transition coordinators to work with employers in the community to develop job placements for youths with disabilities.

The PED is also identifying and soliciting additional possible uses that are specifically tailored to New Mexico schools and student needs.

Maintenance of Effort Requirements

As stated above, these funds must be used consistently with Part B of the IDEA which means that they may only be used for the excess costs of providing special education and related services to children with disabilities. As a result, the maintenance of effort (MOE) requirements are applicable to these funds and may not be waived. However, pursuant to Section 613(a)(2)(C) of IDEA and 34 CFR § 300.205 of its regulations, an LEA may reduce the level of state and local expenditures by up to 50% of the increase in IDEA B funding. If an LEA takes advantage of this provision, it must use the freed-up State Equalization Guarantee (SEG) funding for activities that could be supported under the Elementary and Secondary Education Act and the required MOE for future years is reduced by the amount of reduction of the SEG funding, unless the LEA increases the amount of its state and local expenditures on its own.

In the alternative, an LEA may use up to 15% of its total IDEA Part B and preschool grants for coordinated early intervening services (CEIS) for children in grades K through 12 who are not currently identified as children with disabilities, but who need additional academic and behavioral support to succeed in a general education environment. However, an LEA may use only up to 15% of its allocation minus any amount (on a dollar-for-dollar basis) by which the

LEA reduced its required SEG expenditures under section 613(a)(2)(C). OSEP guidance on the appropriate use of IDEA funds for CEIS is attached to this memorandum. If an LEA has been determined to be significantly disproportionate as provided by 34 CFR § 300.646, you must set aside 15% of your total IDEA entitlement grants for coordinated early intervening services.

Recordkeeping and Reporting Requirements

LEAs will be responsible for ensuring that ARRA funding is used in accordance with the law. As a result, ARRA requires you to separately account for, and report on, how these funds are spent and the results of those expenditures. When you receive these funds, you will be expected to report at least on a quarterly basis a detailed list of all projects or activities for which ARRA funds were expended or obligated, including the name of the project or activity, a description of the project or activity, an evaluation of the completion status of the project or activity, and an estimate of the number of jobs created and the number of jobs retained by the project or activity. Exactly how this will be done will be explained to you at the Spring Budget Workshop and when details of the changes to OBMS and STARS become available.

Additional Information

An additional source of money under Title XIV of the ARRA called the State Fiscal Stabilization Fund will be made available to the LEAs as well as the funds addressed in this memorandum. These funds may also be used for purposes authorized by the IDEA. Further details on the State Fiscal Stabilization Fund will be provided to you at the Spring Budget Workshop.

Information on the ARRA and federal Department of Education guidance regarding it can be found at <http://www.ed.gov/policy/gen/leg/recovery/factsheet/idea.html>.

Should you have any questions with respect to ARRA funding or actually using such funds, please contact the SEB at (505) 827-1457.

DK/ag/le

Enclosures (2)

cc: Veronica C. García, Ed.D., Secretary of Education
Catherine Cross Maple, Ph.D., Deputy Secretary, Learning and Accountability
Don Moya, Deputy Secretary, Finance and Operations
Gloria Rendon, Ed.D., Assistant Secretary, Instructional Support and Vocational Education
Albert Gonzales, Assistant General Counsel, Special Education Bureau
SEB staff
District Superintendents